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PEMBANGUNAN TANAH DAN PERUMAHAN SDN BHD v. PENGARAH TANAH DAN GALIAN NEGERI JOHOR & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
EVROL MARIETTE PETERS JC
B [ORGINATING SUMMONS NO: JA-24NCVC-412-06-2019]
24 NOVEMBER 2019

LAND LAW: *Caveat – Removal of – Application for – Caveats entered by Registrar to preserve lots of land pending investigations on forgery – Whether applicant adopted correct method in seeking to remove Registrar's caveats – Whether applicant ignorant of facts and status of land – Whether application imprecise and nebulous – Whether Registrar's caveats entered ultra vires – Registrar entered caveats on request of Police Diraja Malaysia – Whether caveats justified or ought to be cancelled – National Land Code, ss. 320(1)(a), 321 & 418*

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This was the plaintiff's application (the application) to cancel the Registrar's ('first defendant') caveats registered on 121 lots of land, which were registered in the name of the plaintiff. The first defendant submitted that the caveats were entered on the request of the Polis Diraja Malaysia ('PDRM') on the basis that police reports were lodged by 143 caveators who claimed E that the forms pertaining to the withdrawal of the caveats they had lodged, were forged. The Registrar's caveats were, therefore, entered to preserve the *status quo* of the land, pending conclusion of investigations which, according to the first defendant, involved numerous parties. The plaintiff relied on the following grounds for the application to cancel the Registrar's caveats (i) that F the first defendant had acted *ultra vires*, as the basis for entering a Registrar's caveat pursuant to s. 320(1)(a) of the National Land Code ('NLC') was fraud pertaining to dealings on land, whereas the police reports lodged were pursuant to caveat withdrawal forms that were allegedly forged, and that caveats did not fall within the ambit of dealings; (ii) that the investigations G had concluded when three suspects were charged at the Magistrate's Court, and therefore there was no basis for the Registrar's caveats to remain on the lots of land; and (iii) that the 143 caveators who had lodged the police reports over the caveat withdrawal forms that were allegedly forged, had no interest on the land. The issues that arose were (i) whether the plaintiff adopted the H correct method in seeking to have the Registrar's caveats removed; (ii) whether the plaintiff had identified the lots for which to cancel the Registrar's caveats; and (iii) whether the Registrar's caveats were entered *ultra vires.*

Held (dismissing application with costs):

I **(1)** The plaintiff submitted that it had written *via* letter addressed to the first defendant and the latter failed to respond, thus that was deemed a decision within s. 418 of the NLC. However, this argument was misplaced for the simple reason that there was no decision at all given

by the first defendant. Silence on the part of the first defendant could not amount to a decision, since pursuant to s. 418 itself, such decision must be communicated to the aggrieved person to enable him to appeal at any time within the period of three months from the date of such communication. The court had no jurisdiction to entertain the plaintiff's application to cancel the Registrar's caveats since the procedure prescribed by ss. 321 and 418 of the NLC had not been complied with, as no decision was actually communicated to the plaintiff. (paras 9, 10 & 14)

(2) The plaintiff's application was for the Registrar's caveats to be removed from 121 lots of land. However, only 26 lots remained caveated, bearing in mind that the Registrar had in fact cancelled caveats with regard to several lots of land. The plaintiff, in making this application, was ignorant of the facts and status of the land, rendering this application imprecise and nebulous as it had failed to identify the specific lots. On this ground, this application failed. (paras 16 & 17)

(3) This court was unable to agree with the submission of the plaintiff in view of s. 320(1)(a) of the NLC, which refers to fraud or improper dealing. The provision was, therefore, disjunctive, and in this case the emphasis was on fraud, since the Registrar's caveats were entered to preserve the lots of land pending investigations on caveat withdrawal forms that were allegedly forged. Since forgery is the vehicle to commit offences such as fraud, cheating, breach of trust and misappropriation of property and falsification of documents, the plaintiff's argument was therefore bereft of merit. (paras 19 & 24)

(4) Police reports were lodged and three individuals were charged at the Magistrate's Court. The Registrar's caveats were justified since the first defendant had acted upon information provided to him and upon the request made by PDRM. The first defendant was not in a position to decide on the completion or conclusion of the investigation. The interests of the 143 caveators, or lack thereof, were not factors for the first defendant to consider, since these were not private caveats but Registrar's caveats. The Registrar's caveats ought not to be removed on the present prevailing facts and circumstances therein. (paras 26 & 28-30)

Case(s) referred to:

Agrimal Project Sdn Bhd v. Pendaftar Hakmilik, Pejabat Tanah Dan Galian, Johor & Ors [1997] 3 CLJ Supp 491 HC ***(refd)***

AR PL Palaniappa Chettiar v. PL AR Letchumanan Chettiar & Anor [1981] 1 LNS 160 HC ***(refd)***

Great Eastern Life Assurance (Malaysia) Bhd v. Siu Yan Tam & Anor And Another Appeal [2014] 4 CLJ 666 CA ***(refd)***

Kiu Su Sieng & Ors v. Registrar Of Lands And Surveys, Kuching Division [2016] 2 CLJ 959 HC ***(refd)***

Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd [2017] 5 CLJ 418 FC ***(refd)***
Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369 HC ***(refd)***
Seet Soh Ngoh v. Venkateswara Sdn Bhd & Anor [1975] 1 LNS 159 HC ***(refd)***
Taipan Focus Sdn Bhd v. Tunku Mudzzafar Tunku Mustapha [2011] 1 CLJ 133 FC ***(refd)***
Tan Soo Bing & Ors v. Tan Kooi Fook [1997] 1 CLJ 556 FC ***(refd)***
Yap Toon Choy v. Hong Leong Bank Berhad & Anor [2012] MLJU 288 ***(refd)***

Legislation referred to:
National Land Code, ss. 5, 319, 320(1)(a), 321, 418
Penal Code, s. 468

For the plaintiff - Hafez Zalkapli; M/s Mohd Amin, Ng & Assocs
For the defendants - Mohd Khairi Mohamed Said; State Legal Advisor

Reported by Suhainah Wahiduddin

JUDGMENT

Evrol Mariette Peters JC:

The Application

[1] This is the plaintiff's application ("the application") to cancel the Registrar's ("first defendant") caveats registered as Nos 1272/2016, 32869/2018, 32871/2018, 32883/2018, 32886/2018, 41607/2018 and 44784/2018 on 121 lots of land in Mukim Plentong, Johor Bahru which were registered in the name of the plaintiff.

[2] I dismissed the plaintiff's application and the following are my reasons.

The Defendants' Case

[3] The first defendant submitted that the caveats were entered on the request of the Police Diraja Malaysia ("PDRM") on the basis that police reports were lodged by 143 caveators who claimed that forms pertaining to the withdrawal of the caveats they had lodged, were forged. The Registrar's caveats were, therefore, entered to preserve the *status quo* of the land, pending conclusion of investigations which according to the first defendant, involved numerous parties.

The Plaintiff's Case

[4] The plaintiff relied on the following grounds for the application to cancel the Registrar's caveats:

(i) that the first defendant had acted *ultra vires*, as the basis for entering a Registrar's caveat pursuant to s. 320(1)(a) of the National Land Code ("NLC") was fraud pertaining to dealings on land, whereas the police

reports lodged were pursuant to caveat withdrawal forms that were allegedly forged, and that caveats did not fall within the ambit of 'dealings';

(b) that the investigations had concluded when three suspects were charged in June 2019, at the Magistrate's Court, and therefore, there was no basis for the Registrar's caveats to remain on the lots of land;

(c) that the 143 caveators who had lodged the police reports over the caveat withdrawal forms that were allegedly forged, had no interest in the land.

The Law

[5] The starting point on the law governing the lodging of a Registrar's caveat is found in several provisions of the NLC, including ss. 319 and 320, which read:

Section 319 - Nature and effect of Registrar's caveat

(1) A caveat under this section shall be known as a 'Registrar's caveat', and:

(a) may be entered by the Registrar on the register document of title to any land in any of the circumstances specified in section 320;

(b) subject to sub-section (3), shall, so long as it continues in force, have the effect of prohibiting the registration, endorsement or entry on that document of:

(i) any instrument of dealing;

(ii) any claim to the benefit of a tenancy exempt from registration; and

(iii) any lien-holder's caveat.

(2) The prohibition imposed by a Registrar's caveat shall apply to any such instrument notwithstanding that it was presented for registration before the caveat was entered, and to any such claim or lien-holder's caveat notwithstanding that the application for its endorsement or entry was received before that time.

(3) The Registrar may waive the said prohibition in any case where he is satisfied that to do so would not be inconsistent with the purpose for which the caveat was entered, but, in any case, shall reject the instrument or, as the case may be, the application for endorsement or entry.

(4) On rejecting any instrument or application for endorsement pursuant to this section, the Registrar shall take the like steps as if he had rejected it pursuant to section 298 or, as the case may be, 317.

Section 320 - Circumstances in which Registrar's caveat may be entered

(1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable:

(a) **for the prevention of fraud or improper dealing**; or

A (b) for protecting the interests of:

(i) the Federation or the State Authority, or

(ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

B (ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgement thereon has been obtained; or

C (c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

(2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not of itself constitute a ground for entering a Registrar's D caveat in respect of that land.

(emphasis added.)

[6] Reference may also be made to the Federal Court case of *Taipan Focus Sdn Bhd v. Tunku Mudzzafar Tunku Mustapha* [2011] 1 CLJ 133, where Raus E Sharif FCJ (as he then was) explained:

Section 319 of the Code provides that a registrar's caveat may be entered by the registrar on the register document of title to any land in any of the circumstances specified in s. 320 of the same. Section 320 provides a registrar's caveat may be entered in respect of any land wherever it appears to the registrar to be necessary or desirable, *inter alia*, for the prevention F of fraud or improper dealing.

Contentions And Findings

Whether The Court Had Jurisdiction To Cancel The Registrar's Caveats

G **[7]** The preliminary issue that needed to be addressed at the outset was whether the court had jurisdiction to cancel the Registrar's caveats, that is, whether the plaintiff adopted the correct method in seeking to have the Registrar's caveats removed.

[8] At this juncture, the relevant provisions that must be heeded are H ss. 321 and 418 of the NLC, which read:

Section 321 - Procedure with respect to Registrar's caveat and duration thereof

(1) A Registrar's caveat shall be in Form 19F and the entry of a Registrar's caveat on any document of title shall be effected by the I endorsement thereon, under the hand and seal of the Registrar, of the words "Registrar's Caveat Entered", together with a statement of the time of entry.

(2) As soon as may be after the entry of any such caveat, the Registrar shall serve upon the proprietor of the land and any person or body having a registered interest in the land thereby affected a notification in Form 19A.

(3) **A Registrar's caveat shall continue in force until it is cancelled by the Registrar**:

(a) of his own motion; or

(b) on an application in that behalf by the proprietor of the land affected; or

(c) **pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b)**.

(4) Where the Registrar effects a cancellation under sub-section (3), the Registrar:

(a) if he is acting under paragraph (a) of that sub-section, shall notify the proprietor of the land and any person or body having a registered interest in the land affected; and

(b) in all cases, shall make a note under his hand and seal of the date of the cancellation.

(emphasis added)

Section 418 - Appeals to Court

(1) Any person or body aggrieved by **any decision** under this Act of the State Director, the Registrar or any Land Administrator may, at any time **within the period of three months beginning with the date on which it was communicated to him**, appeal therefrom to the Court.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.

(3) In this section "decision" includes any act, omission, refusal, direction or order.

(emphasis added.)

[9] The plaintiff submitted that it had written to the first defendant *via* letter addressed to the first defendant, dated 21 April 2019 and exhibited as ND-1, attached to the affidavit in support of the plaintiff deposed to by Noor Diana Boon binti Ali Boon, dated 25 June 2019. However, since no response to that letter was forthcoming, the plaintiff submitted that that was deemed a decision within s. 418 of the NLC.

[10] In my view, this argument is misplaced, for the simple reason that there was no decision at all given by the first defendant. Silence on the part of the first defendant cannot amount to a decision, since pursuant to s. 418

itself, such decision must be communicated to the aggrieved person to enable him to appeal at any time within the period of three months from the date of such communication. In this case, there was no such communication.

[11] This was explained in *Tan Soo Bing & Ors v. Tan Kooi Fook* [1997] 1 CLJ 556 FC, in the words of Wan Adnan Ismail FCJ:

> In our view under the special provisions pertaining to Registrar's caveat in ss. 319, 320 and 321 of the Code it is clear that a person who desires to have a Registrar's caveat entered in respect of any land must apply to the Registrar. **If the Registrar refuses his application, his remedy is to appeal to the Court against such refusal. He cannot go straight to the Court. In our view the Court has no jurisdiction to entertain such an application**. The Court only has appellate jurisdiction under s. 418. Under s. 418 the Court may reverse the decision of the Registrar and direct the Registrar to enter the Registrar's Caveat.
>
> (emphasis added.)

[12] The same sentiments may be found in the judgment of Wong Kim Fatt JC in *AR PL Palaniappa Chettiar v. PL AR Letchumanan Chettiar & Anor* [1981] 1 LNS 160:

> It may be noted that under the provisions of section 321(3)(c), the court (in a case where the Registrar is a party) **has the power on appeal under section 418 to order the cancellation of a Registrar's caveat**, as in *Registrar of Titles, Johore, Johore Bahru v. Temenggong Securities Ltd* [1976] 1 LNS 135; [1976] 2 MLJ 44; [1976] 2 WLR 951; [1977] AC 302. The Registrar has no interest in the land in question. He is subject to the authority of the court under the provisions of sections 417 and 418 of the Code. He merely obeys the order of the court for the entry of a Registrar's caveat and must not in such a case cancel it on his own motion unless subsequently ordered to do so by a court of competent jurisdiction. Indeed, failure by the Registrar to comply with the order of court will render him liable to be punished for contempt of court.
>
> (emphasis added.)

[13] I am also guided by Mohamed Dzaiddin J (as he then was) in *Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor* [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369:

> Clearly, from the above subsection, the Registrar's caveat may be cancelled in any of the three ways: (i) either on his own motion, or (ii) on the application made by the registered proprietor, or (iii) pursuant to order of Court on appeal under s. 418 against his decision to enter a caveat or his refusal made in that behalf by the proprietor. In the instant case, sub-paragraph 3(c) is material because this paragraph refers specifically to an appeal under s. 418. Now, subsection (1) of s. 418 reads:
>
> > Any person or body aggrieved by any decision under this Act of the state director, the Registrar or any land administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.

> Therefore, in the light of s. 418, the applicant comes within subsection (3)(c). On the facts, the applicant, being the beneficial and equitable owner of the said property, is an "aggrieved person" within the meaning of s. 418(1) National Land Code. Thus, under s. 321(3)(c) the Registrar can cancel the Registrar's caveat pursuant to an order of Court made under s. 418 by any person aggrieved by the decision of the Director, Registrar or any land administrator.

[14] Taking into account the above authorities, I am of the view that the court has no jurisdiction to entertain the plaintiff's application to cancel the Registrar's caveats since the procedure prescribed by ss. 321 and 418 of the NLC has not been complied with, as no decision was actually communicated to the plaintiff.

[15] However, even if I were to accept the plaintiff's submission that the procedure in ss. 321 and 418 of the NLC was complied with, this application still fails for the following reasons.

Whether The Plaintiff Had Identified The Lots For Which To Cancel The Registrar's Caveats

[16] The plaintiff's application is for the Registrar's caveats to be removed from 121 lots of land. However, according to the details exhibited as MHA-1 attached to the affidavit-in-reply of the defendant, deposed to by Mohamad Noor Azam bin Sulaiman dated 2 September 2019, only 26 lots remained caveated, bearing in mind that the Registrar had in fact cancelled caveats with regard to several lots of land.

[17] It appears therefore that the plaintiff, in making this application, was ignorant of the facts and status of the land, rendering this application imprecise and nebulous, as it has failed to identify the specific lots. On this ground, therefore, this application fails.

Whether The Registrar's Caveats Were Entered Ultra Vires

[18] The plaintiff further argued that the first defendant had acted *ultra vires* as the Registrar's caveats were entered pending investigations on caveat withdrawal forms that were allegedly forged. The plaintiff argued that according to s. 320(1)(a), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable, for the prevention of fraud or improper dealing; and that by virtue of s. 5 of the NLC, 'dealing' does not include caveats and prohibitory orders. Section 5 reads:

> **Section 5 - Interpretation**
>
> 'dealing' means any transaction with respect to alienated land effected under the powers conferred by Division IV, and any like transaction effected under the provisions of any previous land law, **but does not include any caveat or prohibitory order**;
>
> (emphasis added)

[19] I am unable to agree with the submission of the plaintiff in view of s. 320(1)(a) of the NLC which refers to 'fraud or improper dealing'. The provision is, therefore, disjunctive, and in this case the emphasis is on 'fraud', since the Registrar's caveats were entered to preserve the lots of land pending investigations on caveat withdrawal forms that were allegedly forged.

[20] Reference is also made to Chang Min Tat in *Seet Soh Ngoh v. Venkateswara Sdn Bhd & Anor* [1975] 1 LNS 159:

> Section 320(1)(a) empowers the Registrar to enter his Caveat for the **prevention of fraud** and improper dealing and if such a possible dealing is brought to the notice of the Court and the Registrar is before the court, I see no reason why the Court cannot in such a case order him to do so.
>
> (emphasis added)

[21] It has been held by the Federal Court in *Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418 that forgery is a specific method of fraud.

[22] The act of forgery and falsification are the tools for the commission of fraud. This proposition was clearly stated in the case of *Great Eastern Life Assurance (Malaysia) Berhad v. Siu Yan Tam & Anor And Another Appeal* [2014] 4 CLJ 666; [2014] MLJU 273.

[23] It was also undisputed that three individuals, one of whom is a former shareholder and director of the plaintiff, have been charged in the Magistrate's Court under s. 468 of the Penal Code, which reads:

> Section 468 - Forgery for the purpose of cheating
>
> Whoever commits **forgery**, intending that the document forged shall be used for the purpose of **cheating**, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
>
> (emphasis added.)

[24] Since forgery is the vehicle to commit offences such as fraud, cheating, breach of trust and misappropriation of property and falsification of documents (see *Yap Toon Choy v. Hong Leong Bank Berhad & Anor* [2012] MLJU 288), the plaintiff's argument is, therefore, bereft of merit.

[25] The plaintiff in relying on the case of *Kiu Su Sieng & Ors v. Registrar Of Lands And Surveys, Kuching Division* [2016] 2 CLJ 959, further argued that the first defendant had made bare averments regarding the police reports and investigations, as they were not substantiated by any documents.

[26] I am unable to agree with this argument, as the plaintiff had not disputed that police reports were lodged and that three individuals, one of whom is connected to the plaintiff, were charged at the Magistrate's Court in June 2019.

[27] Secondly, the facts of *Kiu Su Sieng & Ors v. Registrar Of Lands And Surveys, Kuching Division* are distinguishable from the facts of the present case. The plaintiffs in *Kiu Su Sieng & Ors v. Registrar Of Lands And Surveys, Kuching Division* had not been summoned by the police to give their statement. Neither were they charged with any offence. In the case before this court, three individuals, one of whom is a former shareholder and director of the plaintiff, have already been charged.

[28] I am of the view, therefore, that the Registrar's caveats are justified since the first defendant had acted upon information provided to him and upon the request made by PDRM. This is akin to the case of *Agrimal Project Sdn Bhd v. Pendaftar Hakmilik, Pejabat Tanah Dan Galian, Johor & Ors* [1997] 3 CLJ Supp 491, where a Registrar's caveat was entered on the application of PDRM.

[29] The first defendant in this case was acting on the request of PDRM, and was not in a position to decide on the completion or conclusion of the investigation. The interests of the 143 caveators, or lack thereof were not factors for the first defendant to consider, since these were not private caveats but Registrar's caveats, and it had been reiterated that the request had been made by PDRM.

Conclusion

[30] In the premises, I am not satisfied that the Registrar's caveats ought to be removed on the present prevailing facts and circumstances herein.

[31] Based on the aforesaid reasons, and after careful consideration of all documents and submissions by counsel for both parties, this application is dismissed with costs in the amount of MYR1500 (subject to allocatur fees).